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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 462

ALAN B. KUPER and VIRGINIA A. KUPER,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioners, by their counsel, petition for a Writ of Certiorari to review the judgment rendered below in this case by the Court of Appeals for the Third Circuit.

Opinions Below

The findings of fact and opinion of the Tax Court (not officially promulgated) were filed September 5, 1963 and have been designated as T. C. Memo 1963-239 (Appendix, *infra*, pp. A1-A17). The opinion of the Court of Appeals (Appendix, *infra*, pp. A18-A19) was filed June 9, 1964, and is reported at 332 F. 2d 562.

Jurisdiction

The judgment of the Court of Appeals was entered on June 9, 1964. The last date for filing a petition for a Writ of Certiorari is September 7, 1964. The jurisdiction of this Court is invoked under 28 U. S. C. §1254(1).

Questions Presented

1. Is a contribution deductible under Section 170(a)(1) and (c)(2) of the Internal Revenue Code of 1954 when made to an organization which is basically and primarily an educational organization devoted to fostering participation of women in public affairs, but which from time to time advocates legislation intended to promote sound government for the benefit of all citizens rather than in the interests of a limited or selfish group?

2. Does a substantial part of the activities of an educational organization consist of attempting to influence legislation within the meaning of Section 170(c)(2)(D) where only an insignificant part of such organization's activities consist of direct efforts to influence legislation, whereas a very substantial portion is spent in studying issues and in formulating, discussing, and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures.

Statutes Involved

Internal Revenue Code of 1954:

SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(a) ALLOWANCE OF DEDUCTION.—

(1) GENERAL RULE.—There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. . . .

(c) CHARITABLE CONTRIBUTION DEFINED.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

* * *

(2) A corporation, trust, or community chest, fund, or foundation—

(A) Created or organized in the United States or in any possession thereof, or under the law of the United States, any State or Territory, the District of Columbia, or any possession of the United States;

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

(a) EXEMPTION FROM TAXATION. An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

* * *

(c) LIST OF EXEMPT ORGANIZATIONS.—The following organizations are referred to in subsection (a):

* * *

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for

religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office."*

Statement

The findings of fact of the Tax Court (Appendix, *infra*, pp. A1-A17) may be summarized as follows:

During the taxable year 1969, petitioners made a contribution of $100 to the League of Women Voters of Millburn, New Jersey (hereinafter, "The Millburn League"). The membership of the Millburn League consisted of approximately 175 women who were citizens of the United States and residents of Millburn (pp. A1-A2).

The Millburn League is basically an educational organization devoted to fostering an intelligent participation of women in public affairs at all levels of government (p. A2).

Primary activities of the Millburn League are to urge residents of Millburn to vote; to disseminate non-partisan information so as to promote intelligent voting; and to hold public meetings at which all candidates are heard and all sides of controversial questions are aired (pp. A3-A4).

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* Section 501(c)(3) is involved in this case because of Treasury Regulation §1.170-1(c)(2), which provides that "[f]or purposes of determining whether an organization is attempting to influence legislation or is engaging in political activities, see section 501(c)(3) and the regulations thereunder."

The Millburn League is an integral part of both the League of Women Voters of the United States and the League of Women Voters of New Jersey, each of which operates as a service organization providing local leagues (such as Millburn) with materials for the study of State and National issues as well as with organizational and administrative assistance (pp. A4-A5). The Millburn League is prohibited by its bylaws* from either supporting or opposing any political party or candidate (p. A2). The same is true of the State and National Leagues (pp. A4 and A5).

The Millburn League's principal activity is the study of government and of issues facing all levels of government (p. A2).

Although the purpose of the League is not to accomplish particular legislative action, it is to develop a well-rounded citizen, a part of which is taking legislative action. Therefore, the League, at the local, State and National levels, frequently arrives at positions on the issues it studies (p. A5).

Once a position is taken involving either a National or State issue, the Millburn League, through its officers, communicates with legislators expressing the views of the League (p. A6).

The Tax Court, noting in its opinion that "[i]t is undoubtedly true that the primary purpose of the Millburn League, as well as the State and National Leagues, was to stimulate interest in public affairs and educate its members in matters relevant to understanding various public issues", nevertheless concluded that "attempting to influence legislation did constitute a substantial part of its activities". (Appendix, *infra*, p. A15).

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*See, Sec. 2 (final sentence), at p. A2, *infra*.

The Court of Appeals, in affirming the decision of the Tax Court, held that "whereas an insignificant part, measured by 'woman hours', of the activities of the League consists of writing, telegraphing or telephoning to representatives in Congress and the state legislature, testifying before legislative committees and like direct efforts to influence legislation, a very substantial portion was spent in formulating, discussing and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures." (Appendix, *infra*, p. A18).

The Court of Appeals deemed it to be "immaterial (1) that the Millburn League, as found by the Tax Court, is basically an educational organization devoted to fostering participation of women in public affairs, and (2) that the legislation advocated from time to time was intended to promote sound government and was for the benefit of all citizens rather than in the interests of a limited or selfish group." (Appendix, *infra*, p. A19).

Reasons for Granting the Writ

1. *The Court below has erroneously decided two important questions of federal law arising under the Internal Revenue Code and involving the deductibility of contributions, which questions have not been, but should be, settled by this Court.*

2. *The rationale expressed in the opinion below, with respect to the important federal questions presented, conflicts with those expressed with respect to the same matters, by the Courts of Appeals for the Second and Sixth Circuits.*

1.

The League of Women Voters of Millburn, New Jersey was found by both the Tax Court and the Court of Appeals

to meet all requirements of Internal Revenue Code Section 170(a) and (c)(2), relating to deductibility of contributions to corporations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, with the exception of subparagraph D which imposes the requirement that "no substantial part of the activities [of the organization] is carrying on propaganda, or otherwise attempting to influence legislation."

The Court of Appeals found, as had been established conclusively by the record, that only an insignificant part of the Millburn League's activities consisted of direct attempts to influence legislation. However, because a substantial part of the League's activities involved *study* and *discussion* of issues with a view to what position, *if any*, might be taken in the future, the Court of Appeals erroneously concluded that such *study* and *discussion* are to be deemed "attempting to influence legislation", within the meaning of Section 170(c)(2)(D).

Where, as here, a non-partisan group, acting in the name and spirit of education, studies and discusses public issues with no preconceived notion of what position, if any, it may subsequently take on such issues, grave doubt exists whether there is any basis either in law, fact or logic for holding that such *studies* and *discussions* constitute "attempting to influence legislation." Moreover, although the question thus presented has never been considered by this Court, the "tacking on" process which the Court of Appeals was obliged to invoke in order to sustain its conclusion, ignores and is repugnant to the principle of statutory construction that the provisions of the Internal Revenue Code relating to charitable deductions are to be liberally construed. *Helvering* v. *Bliss*, 293 U. S. 144, 150-151 (1939).

A second fundamental error made by the Court of Appeals likewise involves a question not heretofore considered by this Court, namely, whether Section 170(c)(2)(D) was intended to preclude deductibility of a contribution made to an organization whose *primary* and *basic* purpose is to educate and *not* to accomplish particular legislative action*, but which, as a mere exercise in citizenship supplemental to its educational objectives, advocates legislation from time to time, which, in the words of the Court of Appeals "was intended to promote sound government and was for the benefit of all citizens rather than in the interests of a limited or selfish group"?

In holding the purposes of the League to be immaterial, the Court of Appeals erroneously ignored the fact that Section 170(c)(2)(B) expressly makes "*educational purposes*" the touchstone of deductibility. Furthermore, the opinions below fail to grasp the proper connotation to be placed on the term "attempting to influence legislation", as used in Section 170(c)(2)(D), and as correctly interpreted by Chief Judge Simons in the opinion written for the Court of Appeals for the Sixth Circuit in *Seasongood v. Commissioner* (1955) 227 F. 2d 907, 911, 912, as follows:

> "And what is meant by 'otherwise attempting to influence legislation'? The statute does not elucidate the phrase and no legislative history has been cited to throw light upon it. In one sense, nearly every effort made by individuals or organizations in the public in-

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* The Tax Court expressly found as follows:

"Although the purpose of the League of Women Voters is not to accomplish particular legislative action, it is, as the national League president testified, to develop a well-rounded citizen, a part of which would be taking legislative action." (App., *infra*, p. A5).

terest and for the betterment of government necessarily, has as an indirect result at least, some influence on legislation * * * So, here, the method of influencing legislation must be considered and there is nothing in the findings of fact that either challenges the validity, the good faith purpose, or any untoward result in the communications addressed by the League either to its members, public opinion generally, or to legislative or administrative officers. Nothing in the record indicates lobbying, influence peddling or illegal or unethical pressures upon legislators. Little is disclosed other than letters to the Governor and an appearance before a legislative committee."

Thirdly, the Court of Appeals erroneously declined to consider the effect on this case of the applicable Treasury Regulations by summarily dismissing, as having "no merit", petitioners' contention that such regulations expressly and unequivocally require a result contrary to that reached by the Tax Court (App. p. A19).

The scope of this petition, as limited by Paragraph 1.(b) of Rule 23, does not permit full development here of this contention. However, the Commissioner's regulations deal with the pivotal question of whether a substantial part of an organization's activities will be considered to consist of attempting to influence legislation within the meaning of Section 170(c)(2)(D). For this purpose, Regulations 1.170-1(c)(2) incorporates by reference the regulations under Section 501(c)(3), relating to organizations which are exempt from taxation because organized and operated exclusively for educational or other exempt [eleemosynary] purposes. (See footnote on page 4, *supra*.)

Regulations 1.501(c)(3)-1(d), in turn, provides that in order to qualify for exemption under Section 501(c)(3),

an organization must meet both the "organizational test" and the "operational test". Inasmuch as the bylaws of the Millburn League do not empower it to perform acts which would be in violation of the *organizational* test contained in §1.501(c)(3)-1(b), the crucial inquiry is and should be whether the Millburn League satisfies the *operational* test as set forth in §1.501(c)(3)-1(c).

Had the Courts below applied the regulations expressly promulgated by the Commissioner for this very purpose, they necessarily would have found, based solely on the findings of fact made by the Tax Court, that each element of the operational test [§1.501(c)(3)-1(c)] [the provisions of which are set forth in the margins below]* is satisfied by the Millburn League.

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* Reg. §1.501(c)(3)-1:

* * *

(c) *Operational test*—(1) *Primary activities.* An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) *Distribution of earnings.* An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholder or individual" see paragraph (c) of §1.501(a)-1.

(3) *"Action" organizations.* (i) An organization is not operated exclusively for one or more exempt purposes if it is an "action" organization as defined in subdivisions (ii), (iii), or (iv) of this subparagraph.

(ii) An organization is an "action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organiza-

(Continued on following page)

Thus, the League engages *primarily* in activities which accomplish its *educational* purpose, as required in subparagraph (1).

(Continued from preceding page)

tion will be regarded as attempting to influence legislation if the organization—

(*a*) Contacts, or urges the public to contact members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(*b*) Advocates the adoption or rejection of legislation.

The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(iii) An organization is an "action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "candidate for public office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(iv) An organization is an "action" organization if it has the following two characteristics: (*a*) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (*b*) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

The League obviously does not violate subparagraph (2); nor has the Commissioner contended otherwise.

The League is not an "action organization", as defined in subdivisions (ii), (iii), and (iv) of subparagraph (3). Inasmuch as a substantial part of its activities does not consist of *direct* legislative activity, subdivision (ii) does not apply. The holding of the Court of Appeals, that study and discussion falls within the statutory term, "attempting to influence legislation", ignores and is contrary to the unambiguous provision of subdivision (ii) that "attempting to influence legislation" means direct legislative action. Moreover, subdivision (ii) expressly states that an organization will *not fail to meet* the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

The Millburn League has never opposed or supported any political party or candidate; hence the requirement of subdivision (iii) is met.

Subdivision (iv), in describing the two characteristics of an "action" organization, presents the very antithesis of the Millburn League of Women Voters, for whose primary objective—education—the passage or defeat of legislation is *not* essential and which does *not*, as its *primary* objective, advocate or campaign for the defeat or passage of legislation, "as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public", which, as found by the Courts below, is the major activity of the League.

Why the Courts below declined petitioners' request to apply Treasury Regulations developed for just such a case as this is not easy to comprehend. In any event, whether or not an organization such as the League of Women Voters is an "action" organization within the meaning of such regulations is a question of national importance which ought to be resolved by this Court.

Fourth, and finally, although the Court of Appeals bottomed its conclusion in this case on the holding of the three-judge majority in *League of Women Voters of the U. S. v. United States* (Ct. Cl. 1961) 180 F. Supp. 379, it is submitted that the correct rule of law and the true intent of Congress is expressed in the following excerpts from the dissenting opinion of Chief Judge JONES, in which former Chief Judge LITTLETON concurred:

> We believe the majority opinion fails to recognize the vast differences between attempting to promote general policies and principles of government that may be implemented by legislation or by other practices and customs that will inure to the benefit of all citizens and tend to promote sound government; and the drive or lobbying for legislation that has for its purpose the serving of the interests of a limited or selfish group. The one may or may not result in legislation. It may be a drive for a treaty, or it may be merely evidenced by a change in the habits, customs and thoughts of a people, while the other has no such over-all objective, but seeks to secure certain privileges for a limited group. We have not the slightest doubt it was the latter type which the Congress sought to put under the ban, and not those who seek to promote the principles of good government, and who seek no advantage to themselves that will not flow to all citizens.
>
> * * *
>
> We are unable to escape the conclusion that the League of Women Voters is a completely unselfish organization operating almost exclusively in the public interest. It is clearly not the type of organization which the Congress meant to exclude from the benefits of the tax-exemption section. The activities of the League are in no sense partisan. It is almost wholly educational

in its nature. It undertakes to present both sides of every issue to its various integral branch organizations, does not undertake to prejudice the issue but undertakes to reflect the sentiment of the various local bodies which have been reached after thorough consideration and discussion. A very small part of the activities of the organization as a whole is devoted to influencing legislation and none at all to influencing legislation that would inure solely to the benefit of the national organization and its integral chapters.

There are well over 1000 local leagues of Women Voters in the United States which depend heavily upon voluntary contributions for their existence and operation. Although the amount involved in this case is small, the fundamental issues raised by this petition affect many thousands of individuals as well as the general administration of the revenue laws. This Court has not previously passed on these issues, but should now speak and provide enlightened guidance for the future.

2.

In *Seasongood* v. *Commissioner*, 227 F. 2d 907 (6th Cir. 1955) and *Dulles* v. *Johnson*, 273 F. 2d 362 (2d Cir. 1959), each of which factually matches the instant case in every essential respect and each of which raises the same legal questions as herein, the Courts of Appeals for the Sixth and Second Circuits, respectively, reached conclusions diametrically opposed to the result obtained herein. More importantly, in the context of judicial conflict, the rationale expressed by both the Sixth and Second Circuits is precisely that contended for by petitioners herein, but expressly rejected by the Court of Appeals for the Third Circuit.

Seasongood v. *Commissioner*, *supra*, involved the deductibility for income tax purposes of a contribution to

the "Hamilton County Good Government League" which both the Tax Court and the Court of Appeals agreed was primarily an educational organization whose stated purpose was to provide an opportunity for discussion of matters of civic importance and to advance good government. However, both Courts also found that the public forums, discussions, and studies sponsored by the Hamilton County Good Government League led to direct legislative activity on the part of the organization amounting to five per cent of its total activities. Respecting these activities, the Court found that:

> The reports of its committees for the years in question indicate very active and unselfish work by the members of the committees in investigating proposed legislation and making a study of necessary legislation to effect some public purpose. *Seasongood* v. *Commissioner*, *supra*, 909.

The Court of Appeals for the Sixth Circuit found that in view of the overall unselfish purposes and activities of the organization, its "political activities" were not substantial within the meaning of 1939 Code Section 23(o), the provisions of which were identical to Section 170(c)(2) of the 1954 Code. Such holding conflicts squarely with the conclusion of the Third Circuit below that the activities of the Millburn League in studying, discussing, and disseminating factual information about questions of public interest were legislative in nature because such activities led to an insubstantial amount of direct legislative activities.

The decision of the Second Circuit in the case of *Dulles* v. *Johnson*, *supra*, likewise conflicts with the holding of the Court below. In the *Dulles* case, the Commissioner of Internal Revenue contested the deductibility under 1939

Code Section 812(d) of bequests to Bar Associations on the theory that a substantial portion of the Associations' activities was devoted to the influencing of legislation. The Second Circuit found that the legislative activity of the Associations did not result in non-deductibility of the bequests because (1) the Associations were not intending through such activity to serve any selfish purpose, but rather to improve court procedure and clarify substantive law, and (2) the legislative activity involved was a small portion of the total activity of the Associations. The Court declared as follows (273 F. 2d at 367):

> These activities serve no selfish purpose of the legal profession—rather they constitute an expert's effort to improve the law in technical and non-controversial areas. In our opinion these activities are scientific, educational and charitable.
>
> The Government argues that these activities constitute propaganda and represent a substantial part of all the activities of the Associations. The cases upon which the Government relies are inapposite. Those cases involved organizations whose *principal* purpose was to implement legislative programs embodying broad principles of social amelioration. [Citations omitted] Here, on the other hand, approval of or opposition to proposed legislation constitutes but a small portion of the total activity of the Associations. Hence this case is closer to *Seasongood* v. *C. I. R.*, 6 Cir., 1955, 227 F. 2d 907. (Emphasis Supplied).

In the *Dulles* case the purpose and motives of the Associations constituted a crucial factor. The Court emphasized that the legislative activities of the Associations served no selfish purpose but rather were performed in the public interest. Such holding squares precisely with

the dissent in the *League of Women Voters of the United States*, *supra*, and with the language of Chief Judge Simons in the *Seasongood* case (227 F. 2d at 911, 912), quoted here at pages 8-9, *supra*.

It should be noted that the League of Women Voters was held to be a tax-exempt educational organization in *Liberty National Bank and Trust Co.* v. *United States*, 122 F. Supp. 759 (W. D. Ky. 1954), a case not appealed by the Commissioner, wherein the Court declared as follows (122 F. Supp. at 766):

> In urging the citizenship within the area of its influence to qualify as voters and to be informed upon the issues settled by exercise of the suffrage of the electorate, the League has rendered invaluable services in the fight against carelessness and indifference in public affairs. If upon sporadic occasions the zeal of its members has invaded the prohibited area of attempting to influence legislation, this becomes of little consequence viewed against the background of the whole of their efforts in behalf of better government.

Organizations such as the League of Women Voters are part of the warp and woof of our society. Their taxable status as donees of voluntary contributions and as tax exempt organizations are a matter of national importance. Inasmuch as the conflict between circuits places such status in doubt, the matter should be resolved by this Court. Moreover, the proper administration of the law, including the need for a uniform rule, requires that the conflict be settled.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari be granted.

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APPENDIX

Memorandum Findings of Fact and Opinion of Tax Court of United States

(Filed—September 5, 1963.)

FAY, Judge: The respondent determined a deficiency in the petitioners' income tax for the year 1960 in the amount of $132.56.

Two of the issues raised by the petition have been settled by stipulation. The only issue remaining for decision is whether the petitioners are entitled to a deduction under section 170 of the Internal Revenue Code of 1954 for a contribution of $100 made to the Millburn, New Jersey, League of Women Voters during the year 1960.

FINDINGS OF FACT

Some of the facts are stipulated and are found as stipulated.

The petitioners are husband and wife residing at 86 Pine Street, Millburn, New Jersey. They timely filed their joint Federal income tax return for the calendar year 1960 with the district director of internal revenue, Newark, New Jersey, on the cash basis of accounting.

On December 27, 1960, petitioner Alan B. Kuper made a contribution of $100 to the Millburn League of Women Voters. Millburn is a municipality lying within Essex County, New Jersey.

The Millburn League of Women Voters was organized in 1945, and from that time through the years involved here has been an unincorporated non-profit organization operating under bylaws. Article II of these bylaws states the purpose and policy of the Millburn League, as follows:

Memorandum Findings of Fact and Opinion of Tax Court of United States

Sec. 1. *Purpose.* The purpose of the League of Women Voters of Millburn shall be to promote political responsibility through informed and active participation of citizens in government.

Sec. 2. *Policy.* The League of Women Voters of Millburn may take action on local governmental measures and policies in the public interest in conformity with the Principles of the League of Women Voters of the United States and the League of Women Voters of New Jersey. It shall not support or oppose any political party or candidate.

During 1960 the membership of the Millburn League consisted of approximately 175 women who were citizens of the United States and residents of Millburn. The governing body of the Millburn League is a board of directors, each member of which is either an officer or a chairman of a standing committee. The Millburn League, for record-keeping purposes, uses a fiscal year ended March 31.

The Millburn League is basically an educational organization devoted to fostering an intelligent participation of women in public affairs at all levels of government.

The League has studied various issues facing all levels of government. In the area of local affairs the members conducted an extensive study of their town, which culminated in the publication in 1954 of a booklet entitled "Know Your Township." This booklet contained a discussion of the history of Millburn, its government and the services it provided, and various local facilities available for the use of residents. During the years involved here the Millburn League was engaged in a study of local schools which led to the publication in 1961 of a booklet entitled "Know Your

Schools." This covered the organization, administration, finance, functioning and facilities of local schools. Finally, a complete study of the library facilities in Millburn was conducted by the League.

The Millburn League held meetings monthly of groups of its members called units. At these meetings current local, State or national issues were studied. One member would be designated to prepare to lead the discussion of a particular issue. After the discussion, the members of the unit sometimes reached a conclusion with respect to the issue under consideration.

In addition to studying political questions arising on the local, State or national level, the League endeavored to find the manner in which governmental bodies operated. Thus, the members attended meetings of boards and committees of the Township of Millburn and occasionally attended sessions of the State legislature.

One of the primary areas of activity of the Millburn League was in urging residents of Millburn to vote and informing them of the issues and positions of the candidates so they might vote intelligently. People were urged to vote, among other ways, through notices inserted in the local paper reminding them of an election. Issues were sometimes placed before the voters through League-sponsored meetings to which the public was invited and for which an attempt was made to obtain speakers to present all sides of a particular issue. Finally, candidates for election to various offices were asked their positions on pertinent issues. Frequently the candidates involved were requested to furnish, in writing, answers to the questions asked. The answers of all candidates who responded were

published, candidates of all parties were treated equally, and the answers were published without editing.

The Millburn League was an integral part of the New Jersey League of Women Voters. Article II of its bylaws declares the purpose and policy of the New Jersey League of Women Voters are as follows:

> Section 1—*Purpose.* The purpose of the League of Women Voters shall be to promote political responsibility through informed and active participation of citizens in government.
>
> Section 2—*Policy.* The League of Women Voters of New Jersey may take action on state governmental measures and policies in the public interest in conformity with the Principles of the League of Women Voters of the United States. The League shall neither support nor oppose any political party or candidate.

The New Jersey League acts primarily as a service organization for local leagues in New Jersey. In this regard, it prepares and provides to local leagues materials to be used in studying such questions arising at the State level as the local leagues of New Jersey choose to consider. It also provides organizational and administrative assistance to local leagues.

The New Jersey League is financed by voluntary donations from its local leagues. The Millburn League donated to the New Jersey League $600 in 1960 and $625 in 1961.

The Millburn League is also an integral part of the League of Women Voters of the United States. The pur-

pose and policy of the United States League are stated in Article II of its bylaws as follows:

> Sec. 1. Purpose. The purpose of the League of Women Voters of the United States shall be to promote political responsibility through informed and active participation of citizens in government.
>
> Sec. 2. Policy. The League may take action on governmental measures and policies in the public interest. It shall not support or oppose any political party or candidate.

The League of Women Voters of the United States performs on the national level functions similar to those performed on the State level by the New Jersey League. Thus, it provides local leagues with materials for the study of national issues and gives organizational and administrative assistance to local units.

The national League is financed by voluntary donations from the State Leagues. As an average, the New Jersey League sends approximately 40 percent of the amount it receives from local units to the national League.

Although the purpose of the League of Women Voters is not to accomplish particular legislative action, "It is," as the national League president testified, "to develop a well-rounded citizen, a part of which would be taking legislative action." Therefore, the League, at the local, State and national levels, frequently arrives at positions on the issues it studies. These positions are generally arrived at in the Millburn League by obtaining a consensus of the views of the members. If the question is a State or national one, the consensus would be forwarded to the State or

national League to be used in compiling a general consensus. The obtaining of a consensus of this kind was frequently the way that a position was arrived at on the local, State and national levels.

The positions taken at all levels of the League were of two types. One of these, which was termed "Continuing Responsibilities," involved matters of a continuing nature upon which the League wished to maintain an enduring position. The other would relate to matters dealt with by the League on its current agenda. The type of issue involved in these matters would tend to be of a more ephemeral nature.

After a position was taken, the League engaged in various activities in support of its position. If the position involved a national issue, representatives of the national League often testified before Congressional committees urging the adoption of the League's views. Copies of this testimony were distributed to local leagues. The national office of the League would also follow the progress of various legislative items upon which the League had taken a position. Notices would be sent to the local leagues indicating the appropriate time for local leagues and their members to take action in support of the League's position. These notices were termed "calls to action." When "calls to action" were received by the Millburn League, notices would frequently be printed on the same subject and sent to all of the members. Individual members were urged to write the appropriate members of Congress or Government officials urging support of the League's positions. Members who responded to these "calls to action" acted in their individual capacities and not on behalf of the Millburn League. Thus, they were free to support or oppose

the League's position. Upon receipt of one of the "calls to action" from the national League, the president of the Millburn League, or someone designated by her, frequently wrote members of Congress on behalf of the Millburn League. While the local leagues remained free to take no action on matters adopted for action by the League on the national level, they could not act in opposition to the position taken by the national League. The Millburn League generally acted in support of the position of the national League.

The State League of Women Voters would notify local leagues in New Jersey of the time to take action on matters on which the League had taken a position at the State level. These "calls to action" issued by the State League would take much the same form as those issued by the national League. The actions taken by the Millburn League upon receipt of "calls to action" from the State League were similar to those taken on receipt of a notice from the national League.

The program of the League of Women Voters of the United States in April 1960, as listed in the May 1960 edition of its publication "The National Voter," was as follows:

CURRENT AGENDA

Governmental issues chosen by the Convention for concerted action.

Support of U. S. economic policies which promote world development and maintain a sound U. S. economy.

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CONTINUING RESPONSIBILITIES

Positions on national issues to which the League has given sustained attention and on which it may continue to act.

1. Support of national policies and procedures which promote comprehensive long-range planning for conservation and development of water resources. Among these policies are: a) better coordination and elimination of conflicts in basic policy at the federal level; b) machinery appropriate to each region which provides coordinated planning and administration; c) cost sharing by government and private interests in relation to benefits received and ability to pay.

2. Support of the United Nations system, including adequate financial contributions, increased use, and improved procedures.

3. Modification of federal loyalty-security programs to limit scope, standardize procedures, apply "common-sense" judgment, and provide the greatest possible protection for the individual.

4. Self-government for the District of Columbia; extension of national suffrage to citizens of the District.

5. Measures granting the President authority to veto items in appropriation bills.

6. Opposition to constitutional limitations on tax rates.

7. Opposition to constitutional changes that would limit the existing powers of the Executive and the Congress over foreign relations.

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The program of the New Jersey League was stated in the June 1959 edition of its publication "New Jersey Voter" as follows:

> STATE TAXES: Work for a graduated personal net income tax for New Jersey.
>
> 1. The main purpose is community education and legislative action. Kinds of action might include provision of speakers, panels or discussion leaders for other organizations, distribution of fliers prepared by the State or by the local League, formation of state and local citizens' committees and any other methods League ingenuity could devise.
>
> It will be important for each League to seize every opportunity not only to get across the advantages of the personal income tax but to refute arguments for the sales tax. To do this may mean that the pros and cons of the sales tax will have to be presented which is possible as long as the League's stand is clear. The explanation should be done as comprehensively as possible with the confidence that knowledge of all the facts will tend to lead others to favor the income tax, as it has us.
>
> Much will depend on the ingenuity and energy of the local Leagues. The State committee will make suggestions of various possible types of action, and may provide material and personnel for going to the community.
>
> 2. A secondary purpose is continued interest in state tax structure and revenue needs. This is in line with League wishes as revealed by the Convention and will contribute to League effectiveness in working for a personal income tax.

(a) Be alert to study any proposed changes in New Jersey taxes.

(b) Gather material on the experience of other states with the personal income tax to determine features which might be desirable for New Jersey.

(c) Follow state budget making in the areas where revenue needs appear most significant.

HIGHER EDUCATION: The role of government in furthering education beyond high school for all qualified students.

In two years of study the League has analyzed New Jersey's existing facilities for higher education and the probable future demand for such education, and consensus was reached on the need to expand physical facilities. Action in accordance with this consensus will include support for the bond issue to be admitted to the people in November, 1959. The League will cooperate with the Citizens Committee for College Opportunities in New Jersey in organizing meetings, providing speakers, distributing materials and other public information activities, to assure the approval of this referendum.

Study under this item during the next two years will include analysis of such topics as: New Jersey's need for institutions for higher education, the role of the State University; the need for graduate and vocational facilities, admission requirements, the possible sources of financial support for higher education, the procurement and retention of well qualified teachers, the administrative supervision of higher educational institutions, the role of the State Department of Edu-

cation and a comparison with the pattern of higher education in other states. It is expected that a comprehensive kit will be prepared as soon as practicable. On the basis of this kit, units would be able to think through the future pattern of higher education in New Jersey with specific recommendations for action by state and local government.

CONTINUING RESPONSIBILITIES:

Consist of positions on state issues to which the League has given sustained attention and on which it may continue to take action.

1. Opposition to dedication of specific tax revenue for specific services. The League stands by our present State Current Agenda item on taxes.

2. State financial measures to improve and equalize opportunities for education.

3. Measures leading to integration of public assistance at the county level.

4. Protection of Optional Municipal Charter Laws.

5. State executive departments headed by single administrators appointed by and responsible to the Governor.

6. Improvement of the procedures and facilities of the Legislature.

7. Revision of the State Election System:

(a) A State Department of Elections headed by a single Commissioner appointed by the Governor.

(b) A single Supervisor of Elections for each County replacing the present bipartisan Boards.

(c) Revision of Title XIX to be prepared under the direction of the new State Commissioner, to be ready for submission to the Legislature by a specific date.

(d) Statewide mandatory use of voting machines.

(e) A residence requirement of 40 days in the county and 6 months in the state for voting in any election.

8. A long range state water resources plan which would include the acquisition of reservoir sites and the development of intra-state as well as inter-state rivers to insure an adequate supply for all water needed.

The Millburn League had little, if anything, of a legislative nature as a "Continuing Responsibility" on the local level during the years involved herein. It did, however, support higher salaries for teachers employed on the local level.

During fiscal 1960 and 1961 the president of the Millburn League, on behalf of the League, wrote the following letters urging the League's position:

1. April 5, 1959, letter to George M. Wallhauser, Congressman, concerning requiring a loyalty oath of Federal employees.

2. May 5, 1959, four letters to delegates to the Republican and Democratic State conventions regarding the tax plank to be included in their platforms.

3. May 8, 1959, letter to Betty Kordja, chairman of the State Assembly Committee on Institutions, Public Health and Welfare, concerning the transfer of home relief assistance to the county welfare boards.

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4. May 8, 1959, letter to Murray R. Klepesch on the same subject.

5. May 28, 1959, letter to George M. Wallhauser favoring home rule for the District of Columbia.

6. February 10, 1960, letter to Clifford P. Case, U. S. Senator, in support of increased appropriations for grants to States to build sewage treatment works.

7. February 10, 1960, letter to Harrison A. Williams, Jr., U. S. Senator, on the same subject.

8. February 10, 1960, letter to George M. Wallhauser on the same subject.

9. February 24, 1960, telegram to George M. Wallhauser stating "Urge your vote to override president's veto on water pollution."

10. February 21, 1961, letter to J. W. Fulbright, U. S. Senator, urging support for U. S. membership in the Organization for Economic Cooperation and Development.

11. March 8, 1960, letters to Fox, Jones, D'Alcia and Brady, members of the New Jersey Legislature, urging an appropriation of $900,000 for college faculty salaries.

12. March 1, 1961, letter to Herbert H. Tate, member of the New Jersey Legislature, opposing the State tax program proposed by the Governor.

13. (Presumably approximately the same date) letter to Elmer M. Matthews, member of the New Jersey Legislature, on the same subject.

It was at all times contemplated by the membership of the Millburn League during their study of any issue that if a position was taken with respect to that issue by any

level of the League of Women Voters the Millburn League would support that position by attempting to influence legislation wherever appropriate, unless an unusual situation occurred in which the Millburn membership felt it could not support a position of the State or national League.

The respondent determined that a substantial part of the activities of the Millburn League of Women Voters was carrying on propaganda or otherwise attempting to influence legislation, and disallowed the petitioners' claimed deduction for the gift to the League.

Although the Millburn League was basically an educational organization, a substantial part of its activities during the years involved was carrying on propaganda or otherwise attempting to influence legislation.

OPINION.

The respondent contends that the petitioners are not entitled to a deduction under section 170[1] of the Internal

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[1] SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

(c) Charitable Contribution Defined.—For purposes of this section, the term "charitable contribution" means a contribution or gift to or for the use of—

* * * *

(2) A corporation, trust, or community chest, fund, or foundation—

(A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State or Territory, the District of Columbia, or any possession of the United States;

(Continued on following page)

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Revenue Code of 1954 for the gift of $100 to the Millburn League because a substantial part of the activities of the Millburn League involved propaganda or attempts to influence legislation. The petitioners, on the other hand, contend that the amount of activity of the Millburn League which was directed toward influencing legislation was inconsiderable. Each case of this type depends upon its own evidence. See *Henriette T. Nuges*, 31 B.T.A. 121 (1934). It is undoubtedly true that the primary purpose of the Millburn League, as well as the State and national Leagues, was to stimulate interest in public affairs and educate its members in matters relevant to understanding various public issues. However, after considering all of the evidence, and in particular those facts set forth in our Findings of Fact, we have concluded that attempting to influence legislation did constitute a substantial part of the activities of the Millburn League of Women Voters during the years involved here.

It is noted that the petitioners filed their tax returns on the basis of a calendar year and the Millburn League used a fiscal year ended March 31, for accounting purposes. This difference might raise a question concerning the proper year to which we should look in determining

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(Continued from preceding page)

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;

(C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and

(D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

whether the Millburn League met the qualifications set forth in section 170(c)(2) of the Internal Revenue Code of 1954. The parties have presented evidence of the operations of the Millburn League in both of the fiscal years which were in part within the calendar year 1960. We have not considered it necessary to determine the precise yearly period to which we should look because for purposes relevant here the operations of the Millburn League were substantially the same throughout the period beginning April 1, 1959, and ending March 31, 1961.

The petitioners urge that none of the activities of the Millburn League can be considered as "propaganda, or otherwise attempting to influence legislation" within the meaning of the statute because the Millburn League desired to influence legislation not for its own selfish benefit but rather for the good of society as a whole. We do not think that the language of the statute can be so narrowly construed. Even before the statutory language with which we are concerned was enacted in the Revenue Act of 1934, 48 Stat. 680, the Court of Appeals for the Second Circuit in dealing with a predecessor of section 170 of the Internal Revenue Code of 1954 stated:

> Political agitation as such is outside the statute, however innocent the aim, though it adds nothing to dub it "propaganda," a polemical word used to decry the publicity of the other side. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them.

Slee v. *Commissioner*, 42 F. 2d 184 (C. A. 2, 1930), affirming 15 B.T.A. 710 (1929).

We think that this language states the policy embodied in section 170(c)(2)(D) of the 1954 Code.

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Nor do we believe that the recent case of *Dulles v. Johnson*, 273 F. 2d 362 (C. A. 2, 1959), in any way affects the result here. There the Court of Appeals in finding that certain legislative activities of the organizations involved were not disqualifying stated:

> Moreover, the legislative recommendations of the Associations, insofar as these recommendations do not involve matters the responsibility for which has been entrusted to the Associations by the Legislature, are designed to improve *court procedure* or to *clarify some technical matter* of substantive law. They are not intended for the economic aggrandizement of a particular group *or to promote some larger principle of governmental* policy. . . [Emphasis supplied]

The matters with which the Millburn League dealt were, during the years involved, in our view "larger principle[s] of governmental policy."

Thus, we hold that the petitioners are not entitled to a deduction for the $100 gift made in 1950 to the Millburn League of Women Voters.

Decision will be entered under Rule 50.

Opinion of United States Court of Appeals for the Third Circuit

(Filed—June 9, 1964.)

Before BIGGS, *Chief Judge*, HAGUE, *Circuit Judge*; KIRKPATRICK, *District Judge*.

This is a petition to review a decision of the Tax Court holding that the taxpayers are not entitled to a deduction of a donation to the League of Women Voters of Millburn, New Jersey, as a charitable contribution within the meaning of Section 170(a)(1) and (c)(2) of the Internal Revenue Code of 1954. More narrowly stated, the issue is whether the record supports the finding of the Tax Court that a substantial part of the activities of the Millburn League consists of attempting to influence legislation, a fact which would disqualify the donation as a charitable contribution.

The evidence shows that whereas an insignificant part, measured by "woman hours", of the activities of the League consists of writing, telegraphing or telephoning to representatives in Congress and the state legislature, testifying before legislative committees and like direct efforts to influence legislation, a very substantial portion was spent in formulating, discussing and agreeing upon the positions, if any, to be taken with respect to advocating or opposing various legislative measures. Whether the latter type of activity is properly considered a part of a program for influencing legislation is the question upon which the case largely turns. The Court of Claims in League of Women Voters of the U. S. v. United States, 180 F. Supp. 379, held that it was and we think that the Tax Court in the present case was correct in taking the same view. The activities in question are an essential part of the general legislative program of the League to pro-

mote desirable governmental policies through legislation, direct political action being the end product.

The Tax Court held that the activities of the League mentioned above, taken together, constitute a substantial part of its program, and we agree. This being so, it follows that it is immaterial (1) that the Millburn League, as found by the Tax Court, is basically an educational organization devoted to fostering participation of women in public affairs, and (2) that the legislation advocated from time to time was intended to promote sound government and was for the benefit of all citizens rather than in the interests of a limited or selfish group.

It is clear that the disqualification of organizations engaged to any substantial degree in political activities, contained in Section 170(c)(2)(D), was intended to apply to educational groups as well as religious, charitable, scientific, or literary organizations, particularly since political and educational activities are often not easily distinguishable. As to the character of the legislation advocated, Congress wisely refrained from distinguishing between types of legislation, very likely in order not to place upon the courts the usually impossible task of determining whether any particular law is unselfish and in the public interest or whether it serves private or selfish interests.

The League of Women Voters case which was before the Court of Claims concerned a gift to the national organization and the present case concerns a gift to a local chapter. However, the Millburn League is an integral part of both the state and national organizations, having substantially the same announced purposes and policies, and the reasoning of the Court of Claims is fully applicable to the present case.

We see no merit in the taxpayers' argument that the Tax Court's holding is at variance with applicable Treasury Regulations.

The decision of the Tax Court will be affirmed.